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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/692,437

10/23/2003

Edward H. Tobergte

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7590

06/27/2006

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EXAMINER

PATEL, TAJASH D

ART UNIT

PAPER NUMBER

3765

DATE MAILED: 06/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Applicant(s)

10/692,437

Applicant(s)

TOBERGTE, EDWARD H.

Examiner

Tejash D. Patel

Art Unit

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 1-4 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 5-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. Claims 1-4 withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention I, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on March 13, 2006.

#### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 5-11 and 13-21, and 23-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beland (US 6,845,522) in view of Bassett. Beland discloses left and right torso pads with left and right cap pad extending from the shoulder portion by means of a strap/loop (118) as shown in figure 2. Further, each of the cap pad provides protection to the arm while allowing movement in any direction as shown in figures 2 and 7. Furthermore, the shoulder portion includes removable left and right deltoid pads as shown in figures 14 and 15. Also, the

protective device of Beland is defined by outer arches with means for accessorizing the shoulder pad as shown in figure 7. In addition, a second means (304) releasably secures the cap pad at a lower end of the arm as shown in figures 2, 4, and 5. However, Beland does not show the pads being made of first and second foam breathable layer with openings that align with the perforation of the inner hard layer therebetween.

It would have been obvious to one skilled in the art at the time the invention was made to form the pad of Beland from first and second foam breathable layer with openings that align with the perforation of the inner hard layer therebetween as taught by Bassett so that the device can absorb force of impact while being comfortable when worn about the body or as required for a particular application thereof.

4. Claims 12 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beland in view of Bassett as applied to claims 6 and 16 above, and further in view of Bainbridge. Beland when viewed with Bassett discloses the invention as set forth above except for showing the first and second breathable layers being formed of closed cell foam beads that are fused together.

Bainbridge discloses a protective pad that is made of closed cell foam beads that are fused together, col. 13, lines 61-67 and as shown in figures 30-32.

It would have been obvious to one skilled in the art at the time the invention was made to substitute the first and second breathable layers of Beland when viewed with Bassett being made of closed cell foam beads that are fused together as taught by Bainbridge as an alternative but equivalent means of absorbing force of impact as known in the art.

### ***Response to Amendment***

5. The response filed on March 13, 2006 with election of group II pertaining to claims 5-27 is acknowledged. Further, the Applicant argued in response filed on 10/24/05 that the prior art of Beland '522, that it does not show any second attachment means for attaching the lower edge of the cap to the arms. The Examiner respectfully disagrees since Beland '522 does indeed show a second means for holding the cap about the lower arms as shown in figures 2, 4 and 5. Furthermore, the amendment has necessitated this office action to be made FINAL.

### ***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

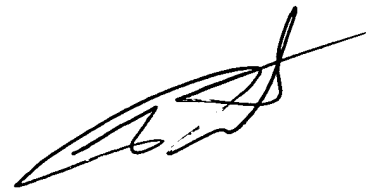
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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tejash Patel whose telephone number is (571) 272-4993. The fax phone number for this group is (703) 872-9306.

June 21, 2005



**TEJASH PATEL**  
**PRIMARY EXAMINER**